HON'BLE Mrs. JUSTICE T.MEENA KUMARI
AND
HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.26700 OF 2007

DATE: 17-12-2007

Between :

M/s. Surya Fuels, No.714/A, Beside Rajeswarinagar,
Nandyal Road, Kurnool, rep. By its
Proprietor Mr. C. Vishunuvardhan … Petitioner

And

1. The Additional Commissioner (CT) Legal,
   A.P., Hyderabad and 2 others. ... Respondents

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AND
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WRIT PETITION No.26700 OF 2007

ORDER : (Per Mrs. Justice T.Meena Kumari)

This writ petition is filed seeking a declaration that the order of the 1st respondent dated 23.10.2007 in rejecting stay application filed by the petitioner for recovery of the disputed penalty of Rs.1,66,527/- pending appeal before the 2nd respondent for the assessment year 2005-06 under the Central Sales Tax Act, 1956 as arbitrary and illegal.

The petitioner is the authorized dealer for Reliance Industries Limited carrying on business in Petroleum products and is an assessee on the rolls of the 3rd respondent – Commercial Tax Officer-III, Kurnool - both under the A.P. Value Added Tax Act, 2005 and Central Sales Tax Act, 1956 (for short, 'the CST Act'). For the assessment year 2005-06, the petitioner had purchased electrical items, diesel generators, air compressor and furniture against issuance of 'C' Form claiming concessional rate of tax @ 4%. However, the 3rd respondent issued show-cause notices dated 21.1.2007 and 9.2.2007 to the petitioner alleging contravention of the provisions of Section 8 (2) of CST Act as the act of issuance of C-Forms for the goods not included in the Registration Certificate would amount to misuse of C-Forms. Though the petitioner submitted detailed explanations on 27.1.2007 and 7.2.2007 respectively, the 3rd respondent, by order dated 12.3.2007, levied a penalty of Rs.1,66,527/- under Section 10-A of the CST Act holding that the

petitioner is not entitled to buy goods other than petroleum products under the C-Forms issued to it. Aggrieved by the order of the 3rd respondent, the petitioner preferred an appeal before the 2nd respondent – Appellate Deputy Commissioner (CT) Appeals, Kurnool, on 26.3.2007 and an application for stay filed on 24.5.2007. However, the 2nd respondent by order dated 28.7.2007 rejected the stay application of the petitioner. Challenging the same, the petitioner filed a Revision before the 1st respondent on 14.8.2007. However, the 1st respondent by order dated 23.10.2007 rejected the stay application of the petitioner. Hence, this writ petition.

Having heard the learned Counsel for the petitioner as well as the learned Government Pleader for Commercial Taxes appearing for the respondents and in view of the fact that the Appeal is pending before the 2nd respondent, we are of the opinion that the interests of justice would be met if stay is granted pending Appeal subject to certain conditions.

Accordingly, the Writ Petition is disposed of granting stay of recovery of the disputed penalty pending the Appeal before the 2nd respondent subject to the petitioner depositing one-fourth of the disputed penalty, after giving credit to the amounts already paid, within a period of four weeks from today. However, in the event of failure to deposit one-fourth of the disputed penalty within the time stipulated above, the impugned order would stand operative.

It is made clear that the amount deposited in compliance with this order shall be without prejudice to the rights of the petitioner in the Appeal.

With the above observation, the Writ Petition is disposed of. No costs.

T.MEENA KUMARI, J.

G. ROHINI, J

Dt.17-12-2007
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